

Art Unit: 2426

### **DETAILED ACTION**

1. This Office action is in response to an AMENDMENT entered March 9<sup>th</sup>, 2009 for the patent application, 09/961,424, filed on September 25<sup>th</sup>, 2001.
2. The Office action of December 9<sup>th</sup>, 2008 is fully incorporated into this Final Office action by reference.

### ***Status of Claims***

3. Claims 38-47 are pending.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in **Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966)**, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows: (*See MPEP Ch. 2141*)

- a. Determining the scope and contents of the prior art;
  - b. Ascertaining the differences between the prior art and the claims in issue;
  - c. Resolving the level of ordinary skill in the pertinent art; and
  - d. Evaluating evidence of secondary considerations for indicating obviousness or nonobviousness.
5. Claims 38-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent Number, “4,890,320”, invented by Monslow et al., hereinafter “Monslow” in view of United States Patent Number, “6,671,879 B1”, invented by Schlarb et al., hereinafter

Art Unit: 2426

“Schlarb” further in view of United States Patent Number, “6,449,355 B1”, invented by Abraham Gutman, hereinafter “Gutman”.

\* Examiner's Note (EN): It appears that the combined teaching of Monslow in view of Schlarb, further in view of Gutman, as a whole, render the character of the invention unpatentable as applied with specific sections identified as follows. ¶ 12 applies.

**Regarding claims 38 and 47,**

Monslow discloses of a community antenna television (CATV) system for providing viewer-chosen program at a viewer requested time to the requesting viewer's television receiver (*Monslow*, Abstract). In this system a central unit (i.e., server or service provider) is connected to a plurality of viewer receivers (i.e., display terminals) via coaxial cables (i.e., second communication path) and viewer conventional handsets (i.e., control terminals) through the local telephone network (i.e., first communication path) – (*Monslow*, [Col. 5, L27-L44]).

Monslow further discloses that after the user has selected a program, the viewer uses their telephone handset to place a telephone call over the conventional telephone network to the telephone number associated with the central unit (*Monslow*, [Col. 6, L4-L13]). The viewer communicates the program choice and the requested time along with the viewer's name and confidential identification number (*Monslow*, [Col. 6, L4-L13]). Additionally the viewer's address and telephone number may be used for further identification/authentication purposes (*Monslow*, [Col. 6, L14-L39], [Col. 7, L29-L40]). Thus teaching the following claimed limitation:

*“a first reception unit configured to receive a video request from one of the plurality of control terminals via the first transmission path, wherein the video request comprises video designation data designating a display terminal on which the video data is to be displayed, and first identification data identifying a first control terminal that transmitted the video request;”*

Monslow is silent to disclose transmitting the first confirmation data to the display terminal in the manner as claimed, receiving the second confirmation data from a control terminal in the manner as claimed, comparing the first and second identification data and first and second identification data in the manner as claimed, and transmitting the requested video data based upon the result of said comparison unit in the manner as claimed.

However, in related art, Schlarb discloses of a single multipurpose pay-per-view (PPV) channel over a hybrid fiber-coax network that a subscriber tunes to for all PPV services (*Schlarb*, [Col. 2, L60-L63], [Col. 3, L35-L47]). “Once a subscriber purchases a PPV event, the Home Communication Terminal (HTC) tunes to the MPEG transport stream and program information for the selected PPV event and displays the PPV event on the single multipurpose PPV channel at its associated start time. The subscriber does not have to select another channel.” (*Schlarb*, [Col. 3, L5-L10])

In this system, a PPV Daemon program receives pass-through messages sent (i.e., generated) from the PPV server and notifies a Watch PPV program module 510, via a Purchase List Manager 505 (PLM) (*Schlarb*, FIG. 5), if a pending PPV event is modified (e.g., has a status problem or has not been authorized) or deleted (*Schlarb*, [Col. 7, L16-L37]). The Watch PPV program coordinates several barkers, including a problem barker to ensure the subscriber is assisted when a problem occurs (*Schlarb*, [Col. 7, L47-L61]). For instance, when there is a

Art Unit: 2426

problem with the purchase, the problem barker program displays problem barker to the subscriber describing the specific problem and providing a customer service telephone number to call (*Schlarb*, [Col. 8, L17-L21]). While *Schlarb* may be directed to allowing a subscriber to navigate the PPV guide to purchase a PPV event, in an alternate embodiment, the Watch PPV program module allows the user to order a PPV selection by calling a telephone number (*Schlarb*, [Col. 4, L12-L27], [Col. 6, L8-L19], [Col. 8, L52-L57]).

Therefore, it would have been obvious to one of ordinarily skilled in the art, at the time of the invention, to apply the technique of delivering a problem barker to the subscriber in the event their is a problem with the purchase or delivery thereof in the manner taught by *Schlarb* to improve the central unit and control units, respectively, of *Monslow* for the predictable result of providing service to the customer in the event of a purchase and/or transmission errors.

Thus, the modified PPV system provided by the combined teaching of *Monslow* and *Schlarb*, as a whole, discloses the following limitation:

*“a generating unit configured to generate first confirmation data;”*

and

*a confirmation data transmission unit configured to transmit, via the second transmission path, the first confirmation data generated by said generating unit to the display terminal designated by the display terminal designation data, and to cause the display terminal to display the first confirmation data;”*

It further would have been obvious to one of ordinary skill in the art, at the time of the invention, to apply the technique of authenticating a caller via the scheduling computer as described by *Monslow* to improve the customer service system of *Schlarb* for the predictable

Art Unit: 2426

result of providing a means for enabling a customer service agent to authenticate a subscriber account before resolving any purchase and/or transmission errors.

Thus, the further modified PPV system provided by the combined teaching of Monslow and Schlarb, as a whole, discloses the following limitations:

*“a confirmation data reception unit configured to receive second confirmation data from a control terminal, wherein the second confirmation data is input in the control terminal by a user who confirms the first confirmation data displayed on the display terminal, and to receive a second identification data of the control terminal that transmitted the confirmation data”.*

Monslow discloses a plurality of customer service representatives each equipped with respective terminals enter information communicated by the viewers into the scheduling and routing computer (*Monslow*, [Col. 5, L27-L35]). In this sense, a first customer service representative reads on the claimed first reception unit and a second customer service representative reads on the claimed confirmation data reception unit. Furthermore, the inherent customer service act of investigating the purchase and/or transmission errors associated with the barker reads on the claimed comparison of first and second confirmation data {(*Monslow*, [Col. 5, L27-L35]) – (*Schlarb*, [Col. 8, L17-L21])}. Moreover, the viewer receives the problem barker indication (i.e., designation) from the viewer's display device (i.e., the correct display terminal). For example, a problem barker designating an authorization problem (*Schlarb*, [Col. 7, L16-L27]) at neighbor's display device (i.e., an incorrect terminal) would confuse a customer service representative, if provided by the viewer. However, a problem barker designating an authorization problem at the viewer's display device would be confirmed by the customer service representative, when provided by the viewer. Thus, reading the additionally claimed:

Art Unit: 2426

*“a comparison unit configured to compare the first identification data received by the first reception unit with the second identification data received by said confirmation data reception unit, and to compare the first confirmation data transmitted by said confirmation data transmission unit with the second confirmation data received by said confirmation data reception unit to confirm that the user has designated the correct display terminal”.*

In the event the user has been authenticated according to the described teaching of Monslow (*Monslow*, [Col. 6, L14-L30], [Col. 7, L29-L41]) and the reported problem input by the user “matches” the actual problem indicated by the automatically generated barker message from Schlarb (*Schlarb*, [Col. 8, L17-L21]), the scheduling computer *would likely* interact with billing and address computer of Monslow such that the billing and address computer sends appropriate decoder signals at the requested time and during the transmission of the program to the requesting viewer’s receiver (*Monslow*, [Col. 6, L60-L65]). Schlarb fails to define the role of the customer service representative after receiving the information from input from the user based upon the confirmation barker. However, in related art, Gutman discloses that it was extremely well known in the art, at the time of the invention, for a customer service representative to ask a series of questions regarding the nature of the problem, and follows the corresponding steps in order to diagnose and resolve the problem (*Gutman*, [Col. 1, L10-L25]).

Therefore, it would have further been obvious to one of ordinary skill in the art, at the time of the invention, to apply the customer service techniques of Gutman to improve the further modified PPV system provided by the combined teaching of Monslow and Schlarb, as a whole, for the predictable result of resolving a caller’s problem with their PPV selection and thereby

Art Unit: 2426

enabling the transmission of the selected PPV selection. Thus, reading on the following limitation:

*“a video transmission unit configured to transmit via the second transmission path the video data designated by the video designation data to the display terminal designated by the display terminal designation data, to display the video data, if the comparisons by said comparison unit result in a match”.*

**Regarding claims 39 and 44**, the claimed subject matter reads on the disclosure of Schlarb such that a specific Home Communication Terminal (HCT) receives notification from the server of a status problem in the form of a problem barker when there is a problem with the purchase (*Schlarb*, [Col. 3, L35-L47], [Col. 7, L16-L27], [Col. 8, L17-L21]) is taught by the combined teaching of Monslow, Schlarb, and Gutman, as a whole.

**Regarding claims 40 and 45**, the claimed “reception identification data” reads on data contained within the problem barker of Schlarb such that the customer service telephone number has been assigned to the requested program choice to enable the viewer resolution in the matter  $\{(Monslow, [Col. 6, L4-L13]) - (Schlarb, [Col. 8, L17-L21])\}$  is taught by the combined teaching of Monslow, Schlarb, and Gutman, as a whole..

**Regarding claims 41 and 46**, the claimed feature reads on the disclosure in Schlarb that the problem barker is transmitted from the server to the viewer's television display, which requires the use of the same transmission path that transmits the requested video program to the viewer's

Art Unit: 2426

receiver (*Schlarb*, [Col. 7, L16-L27], [Col. 8, L17-L21]) is taught by the combined teaching of Monslow, *Schlarb*, and Gutman, as a whole..

**Regarding claims 42 and 47**, the combined teaching of Monslow, *Schlarb*, and Gutman, as a whole, do not discuss the confirmation barker containing a “random number”. However, Official Notice is taken that associating a random number (i.e., reference number) with a confirmation barker was notoriously well known in the art, at the time of the invention, and would have been obvious to incorporate in modified PPV system, provided by the combined teaching of Monslow and *Schlarb*, as a whole, for the added benefit of providing a viewer with a reference number to assist a customer service representative in aiding the viewer’s request.

### ***Response to Arguments***

6. Applicant’s arguments and remarks documented in Applicant’s Response pertaining to the 35 U.S.C. § 112 – Second Paragraph rejections have been considered and are considered fully persuasive. The 35 U.S.C. § 112 – Second Paragraph rejection of claims 38-47 are herein removed.

7. Applicant’s arguments and remarks documented in the Applicant’s submission pertaining to the 35 U.S.C. § 103 (a) rejection of claims 38-47 have been fully considered, but are moot in view of the new ground(s) of rejection.

8. Furthermore, Applicant's arguments pertaining to fail to the 35 U.S.C. § 103 (a) rejection of claims 38-47 comply with 37 CFR 1.111(b) because they amount to a general allegation that

Art Unit: 2426

the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

### ***Examination Considerations***

9. The claims and only the claims form the metes and bounds of the invention. “Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure.” *In re Morris*, 127 F.3d 1048, 1054-1055, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). “Limitations appearing in the specification but not recited in the claim are not read into the claim.” *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969) (MPEP p 2100-8, C 2: L 45-48; p 2100-9, C 1: L 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

10. Examiner’s Notes are provided with the cited references to prior art to assist the Applicant(s) to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art which may be applied in future Office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art, but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

11. Unless otherwise annotated, Examiner’s statements are to be interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the

Art Unit: 2426

disclosure constitute, on the face of it, the basis and such would be obvious to one of ordinary skill in the art, establishing thereby an inherent prima facie statement.

12. Examiner's Opinion: ¶¶ 9-11 apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Claims 38-47 are rejected.

### ***Contact***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brett Rustemeyer whose telephone number is (571) 270-1849. The examiner can normally be reached on Monday - Friday 9:00 a.m.-5:30 p.m. EST.

Art Unit: 2426

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hirl can be reached on (571) 272-3685. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BR/

June 18<sup>th</sup>, 2009

Examiner – Art Unit 2426

/Joseph P. Hirl/

Supervisory Patent Examiner, Art Unit 2426

June 18, 2009